IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 54 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DEEPAK NITRITE LTD.

Versus

COMMISSIONER OF INCOME-TAX

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Appearance:

1. INCOME TAX REFERENCE No. 54 of 1987
MR MANISH J.SHAH for Applicant.
MR AKIL QURESHI FOR MR MANISH R BHATT for Respondent.

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CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 31/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1 At the instance of the assessee, the following three questions have been referred to this Court by the Income Tax Appellate Tribunal, Ahmedabad Bench "B", for its opinion under the provisions of section 256(1) of the Income Tax Act,1961.

"1 Whether the commission paid to the Managing Director and whole time Director can be treated as remuneration for purpose of working out of the disallowance u/s.40(c) of the Act?

2 Whether a sum of Rs.87,275/- paid by the Company in respect of the loan taken for purchase of machinery and arising on account of exchange fluctuation was allowable as revenue expenditure ?

3 Whether a sum of Rs.56,840/- paid on account of guarantee commission by the assessee Company was allowable as revenue expenditure ?"

2. Learned Advocate Mr.Manish J.Shah has appeared for the applicant-assessee whereas learned Advocate Mr.Akil Qureshi has appeared for the respondent.

3. So far as the first question is concerned, it has been covered by the judgment delivered in the case of C.I.T. vs. Rohit Mills Ltd., 219 I.T.R.228. Looking to the law laid down in the said judgment, we answer the first question in the affirmative i.e. in favour of the revenue and against the assessee.

4. So far as the second question is concerned, looking to the law laid down by this Court in the case of Ambica Mills Ltd. vs. C.I.T., 235 I.T.R.265, we answer the question in the negative i.e. in favour of the revenue and against the assessee.

5. The last question has also been decided in the case of Addl.C.I.T. Vs. Akkamamba Textiles Ltd., 227 I.T.R. 464. Looking to the law laid down in the said judgment, we answer the said question in the affirmative i.e. in favour of the assessee and against the revenue.

6. The Reference thus stands disposed of accordingly with no order as to costs.

Sd/- Sd/-

(A.R.Dave, J) (D.A.Mehta, J)

m.m.bhatt